

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAMIRO REYES, DOLORES REYES,
and DESIREE REYES,

Plaintiffs,

CIV S-04-0428 FCD PAN PS

v.

COUNTY OF SAN JOAQUIN, et
al.,

FINDINGS AND RECOMMENDATIONS

Defendants.

—oOo—

On July 6, 2005, the court heard defendants' motion to dismiss plaintiffs' complaint and plaintiffs' opposition thereto. The court construed defendants' motion as one for summary judgment¹ and directed the parties to file supplemental briefing.

¹ On a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(b).

1 The court now issues these findings and recommendations.

2 Plaintiffs filed their amended complaint on May 21, 2004,
3 alleging violations of their First, Fourth and Fourteenth
4 Amendment rights under 42 U.S.C. § 1983, violations of the
5 Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., and
6 state law causes of action for intentional infliction of
7 emotional distress, defamation and false imprisonment. The
8 complaint challenges an order of temporary public conservatorship
9 over the person and estate of plaintiff Dolores Reyes, now
10 deceased,² who was the wife of plaintiff Ramiro Reyes and the
11 mother of plaintiff Desiree Reyes. Defendants include members of
12 the San Joaquin Board of Supervisors (Marenco, Gutierrez, Mow,
13 Sieglock, and Ornellas), the County Administrator (Lopez), the
14 County Counsel (Dermody), Deputy County Counsel (Sparks), Human
15 Services administrators (Chelli and Valadez), Human Services
16 analysts (Winkler and Taylor), a Human Services physician
17 (Silver), a Human Services social worker (Smith), a Public Health
18 nurse (Giles), a Department of Aging administrator (Moore), and a
19 private physician (Malak).³

20
21 ² Dolores Reyes died April 22, 2005, at the age of 64. See copy of
22 Certificate of Death attached to Defendants' Notice filed June 10, 2005. The
certificate states her cause of death was Alzheimers Disease which began eight
years previous.

23 ³ The following defendants were personally served with a copy of the
24 summons and complaint and filed their motion to dismiss on September 24, 2004:
25 County of San Joaquin, Dario Marenco (sued as Marengo), Steve Gutierrez,
26 Victor Mow, Jack Sieglock (sued as Siglock), Leroy Ornellas, Manuel Lopez,
Terrence Dermody (sued as Terrance), Sheryle Sparks (sued as Sheryl), Joseph
Chelli, Robert Winkler, Marchell Smith (sued as Marcell), and Hilary Silver,
M.D. The following defendants joined in the motion to dismiss May 2005,

1 The court previously appointed Mr. Reyes guardian ad
2 litem for both Mrs. Reyes and Desiree but on July 6, 2005,
3 vacated the appointment for Desiree as she had reached 18 years
4 of age, and held that the appointment for Mrs. Reyes was vacated
5 upon her death.

6 Neither Mr. Reyes nor Desiree represent the estate of
7 Mrs. Reyes and therefore each proceed in this action upon only
8 their respective personal claims. The court determined at the
9 hearing that plaintiffs have standing to pursue only their claim
10 that the temporary conservatorship of Mrs. Reyes violated their
11 First and Fourteenth Amendment rights to familial association
12 under 42 U.S.C. § 1983.

13 On a motion for summary judgment, the moving party must
14 establish there is no genuine issue of material fact and the
15 moving party is entitled to judgment as a matter of law. Fed. R.
16 Civ. P. 56(c). An issue is "genuine" if the evidence is such
17 that a reasonable jury could return a verdict for the opposing
18 party. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986).
19 A fact is "material" if it affects the right to recover under
20 applicable substantive law. Id. The moving party must submit
21 evidence that establishes issues upon which the movant bears the
22 burden of proof; if the movant does not bear the burden of proof
23 on an issue, the movant need only point to the absence of
24

25 asserting they were "later served:" Edward Allum, Linda Valadez, Marycorrine
26 Giles (sued as Tammie), Diane Taylor, Alicia Baylor, Wendy Moore, Lindy Turner
(sued as Linda), Merly Sumuraga (sued as M. Sumuraga), Taymour Malak, M.D.

1 evidence to support the opponent's burden. Celotex Corporation
2 v. Catrett, 477 U.S. 317, 324 (1986). To avoid summary judgment
3 on an issue upon which the opponent bears the burden of proof,
4 the opponent must present affirmative evidence sufficiently
5 probative such that a jury reasonably could decide the issue in
6 favor of the opponent. Matsushita Elec. Indus. Co. v. Zenith
7 Radio Corp., 475 U.S. 574, 588 (1986). When the conduct alleged
8 is implausible, stronger evidence than otherwise required must be
9 presented to defeat summary judgment. Id. at 587.⁴

10 Fed. R. Civ. P. 56(e) provides that "supporting and
11 opposing affidavits shall be made on personal knowledge, shall
12 set forth such facts as would be admissible in evidence, and
13 shall show affirmatively that the affiant is competent to testify
14 to the matters stated therein." The opponent need not produce
15 evidence in a form that would be admissible at trial in order to
16 avoid summary judgment. Celotex, 477 U.S. at 324. Rather, the
17 questions are (1) whether the evidence could be submitted in
18 admissible form and (2) "if reduced to admissible evidence" would
19 it be sufficient to carry the party's burden at trial. Id., at
20

21 ⁴ The purpose of summary judgment is to "pierce the pleadings" and
22 assess the proof in order to see whether there is a genuine need for trial.
23 Matsushita, 475 U.S. at 587. To survive summary judgment, the opponent must
24 do more than simply show there is some "metaphysical doubt" as to the material
25 facts. Id. at 586. Where the record taken as a whole could not lead a
26 rational trier of fact to find in the opponent's favor, there is no genuine
issue for trial. Id. at 587. While on summary judgment, the inferences drawn
from the underlying facts must be viewed in the light most favorable to the
nonmoving party; if the factual context renders plaintiff's claims
implausible, plaintiff must come forward with more persuasive evidence than
would otherwise be necessary. Id.

327. A verified complaint based on personal knowledge setting forth specific facts admissible in evidence is treated as an affidavit. Schroeder v. McDonald, 55 F.3d 454 (9th Cir. 1995); McElyea v. Babbitt, 833 F.2d 196 (9th Cir. 1987). A verified motion based on personal knowledge in opposition to a summary judgment motion setting forth facts that would be admissible in evidence also functions as an affidavit. Johnson v. Meltzer, 134 F.,3d 1393 (9th Cir. 1998); Jones v. Blanas, 393 F.3d 918 (9th Cir. 2004). Defects in opposing affidavits may be waived if no motion to strike or other objection is made. Scharf v. United States Attorney General, 597 F.2d 1240 (9th Cir. 1979).

To make out a claim under 42 U.S.C. § 1983, plaintiffs must demonstrate deprivation of a federal constitutional or statutory right under color of law. Dang Vang v. Toyed, 944 F.2d 476, 479 (9th Cir. 1991); Oviatt By and Through Waugh v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992). Plaintiffs claim defendants' imposition of a temporary public conservatorship over the person and estate of Mrs. Reyes was accomplished "fraudulently [and] with malicious intent," and violated plaintiffs' First and Fourteenth Amendment rights "not to be denied liberty, including family relations, without due process of the law." Complaint, ¶¶ 6, 7.

The right to familial association is a recognized liberty interest under the First and Fourteenth Amendments protected from state interference without due process of law. The right extends not only to the reciprocal rights of parents and their minor

children (see, e.g., Kelson v. City of Springfield, 767 F.2d 651 (9th Cir. 1985), but to the rights of parents toward their adult children (see, e.g., Lee v. City of Los Angeles, 250 F.3d 668, 685 (9th Cir. 2001), Strandberg v. City of Helena, 791 F.2d 744 (9th Cir. 1986), and Curnow by and Through Curnow v. Ridgecrest Police, 952 F.2d 321, 325 (9th Cir. 1991)), the rights of adult children toward their parents (Curnow, supra, 952 F. 2d at 325, Smith v. City of Fontana, 818 F.2d 1411, 1419 (9th Cir. 1987), overruled on other grounds by Hodgers-Durgin v. de la Vina, 199 F. 3d 1037 (9th Cir. 1999)), and the rights of a spouse (Byrd v. Guess, 137 F.3d 1126, 1134 (9th Cir. 1998)).⁵

"To recover for a violation under § 1983 for interference with familial rights, a plaintiff must show that the defendant acted with deliberate indifferen[ce] to these rights," Venerable v. City of Sacramento, 185 F. Supp. 2d 1128, 1131 (E. D. Cal. 2002), citing Byrd v. Guess, 137 F.3d 1126, 1134 (9th Cir. 1998) (excessive force), or the government's actions constitute "unwarranted interference" with an individual's rights to

⁵ "It is well established that a parent has a fundamental liberty interest in the companionship and society of his or her child and that the state's interference with that liberty interest without due process of law is remediable under 42 U.S.C. § 1983. This constitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents. Moreover, the First Amendment protects those relationships, including family relationships, that presuppose deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." Lee v. City of Los Angeles, 250 F.3d 668, 685 (9th Cir. 2001) (citations and internal quotations omitted).

1 familial association, Lee v. City of Los Angeles, supra, 250 F.3d
2 at 686.

3 "Deliberate indifference is a stringent standard of
4 fault, requiring proof that a municipal actor disregarded a known
5 or obvious consequence of his actions." Kennedy v. City of
6 Ridgefield, 411 F.3d 1134, 1143 (9th Cir. 2005) (citations and
7 internal quotations omitted). "Unwarranted interference"
8 includes governmental actions that are vexatious and unnecessary,
9 Nixon v. Fitzgerald, 457 U.S. 731, 781-782 (1982), harassing,
10 unfounded or unreasonable, United States v. Dionisio, 410 U.S.
11 19, 45, (1973), and arbitrary, discriminatory, or demonstrably
12 irrelevant, Carter v. Carter Coal Co., 298 U.S. 238, 332 (1936).
13 Due process requires that the challenged law, policy or goal "not
14 be unreasonable, arbitrary, or capricious, and that the means
15 selected shall have a real and substantial relation to the object
16 sought to be attained." Nebbia v. People of New York, 291 U.S.
17 502, 525 (1934).

18 The following facts are undisputed. Mrs. Reyes was
19 diagnosed with Alzheimer's disease in the mid-1990s, rendering
20 her by 2002 nonverbal, nonresponsive, subject to seizures and
21 unable to care for herself yet physically mobile. Mrs. Reyes
22 resided with her son Paul Reyes, who was the designated payee for
23 Mrs. Reyes' public benefits. Mrs. Reyes was cared for by family
24 members, including Paul, Desiree and Mr. Reyes although the
25 couple was separated.

26 In 2002, Mr. Reyes requested the assistance of the San

1 Joaquin County Adult Protective Services (APS) to obtain
2 residential care for Mrs. Reyes in a secure skilled nursing
3 facility.⁶ APS had difficulty identifying appropriate local
4 facilities that met Mrs. Reyes' needs⁷ but Mr. Reyes visited at
5 least two facilities that he found unsatisfactory.⁸

6 In February 2003, Mrs. Reyes was hospitalized at St.
7 Joseph's Hospital following a seizure.

8 In an effort to obtain long-term placement at nearby
9 Crestwood Manor,⁹ which defendants assert "require all persons
10 they accept to be conserved, i.e., have a conservator appointed

11
12 ⁶ Plaintiff's Supplemental Brief (Mr. Reyes' July 13, 2005 Statement,
13 p. 1, and (b) Plaintiff's Objection to Establishing a Conservatorship, p. 1,
lines 27-28); and Giles Decl., ¶ 3F.

14 ⁷ MaryCorinne Giles, who was the APS investigator assigned to Mrs.
15 Reyes, states that "[b]ecause Ms. Reyes was only on SSI assistance, it was
16 difficult to place her in privately owned facilities There are only a
17 few locked facilities in the area. I worked for six months on trying to
find[] a suitable placement for Ms. Reyes, including looking in San Joaquin
County, up to Sacramento, out to the Bay Area, and down to Fresno, but I was
not able to place her." Giles Decl., ¶ 3I.

18 ⁸ The parties dispute the reasons why these potential placements
19 failed. Mr. Reyes states that neither facility provided bed railings (but
20 recommended sedation as an alternative) (Mr. Reye's Statement, at p. 2) while
21 defendants state Mr. Reyes was demanding and difficult (Giles Decl., ¶ 3L).
22 The parties also dispute the timing of these visits. Defendants assert both
visits took place after Mrs. Reyes' February 2003 hospitalization, and with
the assistance of St. Joseph Hospital. Giles Decl., ¶¶ 3K, L. Mr. Reyes
asserts he visited one facility prior to Mrs. Reyes' hospitalization, and one
thereafter, both upon the recommendation of APS. Mr. Reye's Statement, at pp.
1-2)

23 ⁹ MaryCorinne Giles states, "The only other viable option was
24 Crestwood Manor." Giles Decl., ¶ 3M. Crestwood Manor Stockton is a
25 residential skilled nursing facility owned and operated by Behavioral Health,
26 Inc. See <http://www.crestwoodmanor.com/stockton.html>. Its services include
"long-term treatment and services to people with a primary medical diagnosis
and an underlying behavioral diagnosis—for example Alzheimer's or disease-
related dementia." Id.

1 for them" (Giles Decl., ¶ 3M), APS implemented conservatorship
2 proceedings. Defendants state without opposition that "[b]oth
3 Mr. Reyes and his son expressly agreed to the referral and to
4 seeking the conservatorship." Giles Decl., ¶ 3N.

5 On February 19, 2003, the San Joaquin County Superior
6 Court appointed the Public Conservator as temporary conservator
7 of Mrs. Reyes.¹⁰ The appointment was based upon the affidavit of
8 Dr. Taymour Malak, M.D., Mrs. Reyes' physician.¹¹ The superior
9 court stated (Feb. 19, 2003, Order Appointing Temporary
10 Conservator, p. 1):

11 Upon review, the Court finds that said affidavit
12 demonstrates the necessity for a temporary conservatorship
13 investigation for the County of San Joaquin, as it appears
14 that said individual is gravely disabled within the meaning
15 of Section 5008(h) of the Welfare and Institutions Code as
16 the result of mental disorder and is unable to accept
17 treatment voluntarily.

18 California Welfare and Institutions Code section 5008(h)
19 provides that "gravely disabled" means, "A condition in which a
20 person, as a result of a mental disorder, is unable to provide
21 for his or her basic personal needs for food, clothing, or
22 shelter." Cal. Welf. & Inst. Code § 5008(h)(1)(A). The
23 supporting affidavit of Dr. Malak, dated February 2, 2003,
24 reflected an examination date of December 12, 2002, and states

25 ¹⁰ The appointment was for a thirty-day period commencing upon the
26 Conservator's oath. The order appointed the county public defender to
represent Mrs. Reyes in further proceedings for permanent conservatorship.

¹¹ February 19, 2003, Order of the San Joaquin Superior Court
Appointing Temporary Conservator, p. 1. Exhibit 1 to Defendants' Request for
Judicial Notice, p. 7.

1 that Mrs. Reyes was gravely disabled pursuant to section 5008(h)
2 due to "Alzheimer's disease, dementia and anxiety."¹²

3 Also on February 19, 2003, following appointment as
4 temporary conservator, the Public Conservator filed a petition
5 for permanent conservatorship. The petition states that Mrs.
6 Reyes was evaluated by Dr. Hilary Silver, M.D., who "has
7 determined the proposed conservatee to be gravely disabled as a
8 result of a mental disorder." The petition also states that
9 "[t]he proposed conservatee is now at the San Joaquin County
10 Mental Health Center. . . ."¹³

11 Plaintiffs maintain-and defendants do not disagree-that
12 both statements are false. By all accounts, Mrs. Reyes was never
13 examined by Dr. Silver, a psychiatrist, and never resided at the
14 San Joaquin County Mental Health Center. These statements are at
15 the heart of plaintiffs' litigation.¹⁴

16 The petition for permanent conservatorship also included
17 (1) the February 2, 2003, Declaration of Dr. Malak, (2) the
18 appointment of temporary conservatorship, and (3) the order
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20

21 ¹² Declaration of Physician or Psychologist That Conservatee is Gravely
Disabled, p. 1. Exhibit 1 to Defendants' Request for Judicial Notice, p. 9.

22 ¹³ February 19, 2003, Petition for Appointment of Conservator, pp. 1-2,
23 Exhibit 1 to Defendants' Request for Judicial Notice, pp. 1-2.

24 ¹⁴ At the hearing plaintiffs also challenged document citations to 1800
N. California Street and 2800 N. California Street. Defendants confirmed at
25 the hearing and subsequently that these addresses refer respectively to St.
Joseph's Medical Center and the office of Dr. Taymour Malak. Defendants'
26 Supplemental Brief, at p. 5, n. 5 and pertinent text. The addresses are
reflected accurately in the papers submitted to this court.

1 appointing temporary conservatorship.¹⁵ Defendants' Request for
2 Judicial Notice, Exhibit 1, p. 9.

3 In anticipation of the hearing on permanent
4 conservatorship, defendants "served" papers upon Mrs. Reyes. Mr.
5 Reyes' Statement, at p. 2. "They just threw the papers down at
6 her" and these papers "contained [the] fraudulent affidavi[t]s."
7 Id.

8 In response, Mr. Reyes filed with the superior court an
9 "Objection to Establishing of a Conservatorship" wherein he
10 stated in full (March 11, 2003, Objection, at pp. 1-2, Attachment
11 to Mr. Reyes' Statement):

12 Objector, Ramiro Reyes, is the husband of the proposed
conservatee, Dolores Reyes.

13 Objector contends that there is no need for a
conservatorship.

14 The proposed conservatee suffers from Alzheimer's
Disease and has so for several years. Objector, along with
15 his son, Paul Reyes, has provided her all necessary care.
Objector has tried to obtain a full care facility for the
16 proposed conservatee, however, none is available in San
Joaquin County that meets her needs. Objector fears that by
17 appointing the County as the conservator to which he
strongly objects, the County will only put the conservatee
18 on medicines to completely sedate her so that she requires
no care and would not enjoy any quality of her life as she
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20 ¹⁵ The following reports-set forth in a separate exhibit before this
court-may also have been included in the petition for permanent
21 conservatorship. See Defendants' Request for Judicial Notice, Exhibit 3. An
unsigned investigative report dated March 12, 2003, recommends that Mrs. Reyes
22 be found gravely disabled due to mental disorder. Id., at p. 1. An undated
and unsigned report recommends that Mr. Reyes rather than the Public
23 Conservator be appointed permanent conservator based on the following: (1) a
supporting statement from Dr. Malak obtained March 12 providing, "I think [Mr.
24 Reyes] can [take care of Mrs. Reyes], he did before. So I think for the most
part he took good care of her at home. Appeared reasonably taken care of, no
25 decubitus ulcers or signs;" and (2) Mr. Reyes arranged for three family
members to care for Mrs. Reyes through the "In Home Support Services" program
26 and stated his intent to be appointed conservator. Id., at pp. 5-6.

1 is currently able to despite her disease.

2 Recent newspaper coverage about the San Joaquin
3 conservator office increases objector's strong feelings that
4 the County of San Joaquin should not be appointed a
5 conservator, and if any conservator is to be appointed, it
6 should [be] the undersigned, Ramiro Reyes.

7 The proposed conservatee has no assets that need any
8 administration. To the extent a power of attorney is
9 needed, the proposed conservatee has provided the
10 undersigned with a power of attorney.

11 On March 21, 2003 (order filed April 1), the superior
12 court terminated the temporary conservatorship and dismissed the
13 petition for permanent conservatorship. The order provides no
14 rationale but the attached minute order states that Mr. Reyes was
15 questioned and the "matter dropped." Defendants aver, "The
16 County dropped the conservatorship proceedings" when it became
17 clear the family "changed their minds about this whole placement
18 process." Defendants' Supplemental Memorandum, at p. 3. Mr.
19 Reyes states that, upon questioning by the judge about Mrs.
20 Reyes' current placement (a hospital, not a mental facility) and
21 the absence of a testifying psychiatrist, Ms. Sheryle Sparks,
22 Deputy County Counsel, "asked that the case be dismissed." Mr.
23 Reyes' Statement, at pp. 2-3.

24 Mrs. Reyes was cared for at St. Joseph's Hospital from
25 February 10 to March 23, 2003,¹⁶ and therefore throughout the
26 period of her temporary conservatorship (February 19 to March
21). She died April 22, 2005, at the Hospice House of San

¹⁶ Statement of Desiree Reyes at p. 1, Mr. Reyes' Statement, Cover Sheet.

1 Joaquin.¹⁷

2 Mrs. Reyes' temporary conservatorship reflects the
3 relevant time period for assessing the alleged violation of
4 plaintiffs' rights to familial association. Only during this
5 period was the county authorized to make medical and other
6 decisions for Mrs. Reyes or deny plaintiffs access to her.

7 Plaintiffs do not assert, however, they were denied
8 access to Mrs. Reyes or input in her care, nor even that they
9 were opposed to the temporary conservatorship.

10 Plaintiffs' principal complaint is that defendants acted
11 with malice in relying upon, under penalty of perjury,
12 "fraudulent affidavits" stating that Mrs. Reyes resided at the
13 county mental health facility and had been examined by
14 psychiatrist Dr. Silver. However, these admittedly incorrect
15 statements were filed in support of the petition for permanent
16 conservatorship, not temporary conservatorship. The superior
17 court did not rely on these statements. Moreover, plaintiffs'
18 written opposition to the petition for permanent conservatorship
19 did not even challenge these statements, focusing instead on the
20 possibility of unnecessary sedation.

21 Plaintiffs also challenge the assessment, made pursuant
22 to the petitions for both temporary and permanent
23 conservatorship, that plaintiff was gravely disabled as a result

24
25 ¹⁷ Dolores Reyes died at the Hospice House of San Joaquin (Certificate
26 of Death attached to Defendants' Notice filed June 10, 2005), a nonprofit
residential care facility that is "Medicare/Medi-Cal certified" (see
www.hospicesj.org/about.asp).

1 of a "mental disorder." Plaintiffs argue that Alzheimer's
2 disease is not a mental disorder and to so characterize it has
3 falsely and maliciously interfered with the family's privacy and
4 due process rights. However, this designation is consistent with
5 (1) Dr. Malak's assessment Mrs. Reyes was "gravely disabled" as a
6 result of "Alzheimer's disease, dementia and anxiety," and
7 (2) the American Psychiatric Association's inclusion of "Dementia
8 of the Alzheimer's Type" in its Diagnostic and Statistical Manual
9 of Psychiatric Disorders.¹⁸ Moreover, the characterization of
10 plaintiff's uncontroverted dementia as a "mental disorder" was
11 essential to the initiation of the temporary conservatorship
12 proceedings to which plaintiffs acceded. Dr. Malak made his
13 assessment on a form that defined "gravely disabled" "within the
14 meaning of Welfare and Institutions Code section 5008(h) as a
15 result of a mental disorder." It is only in tandem with the
16 false statements that plaintiff was examined by Dr. Silver and
17 resided at the county mental health facility that the diagnosis
18 "mental disorder" took on an inappropriate meaning.

19 I find that plaintiffs have failed to meet their burden
20 of demonstrating defendants acted with deliberate indifference or
21 unwarranted interference in obtaining and maintaining temporary
22 public conservatorship of Mrs. Reyes. Plaintiffs have failed to
23 demonstrate defendants acted vexatiously or arbitrarily or
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25 ¹⁸ Diagnostic and Statistical Manual of Psychiatric Disorders (4th Ed.
26 1994), at pp. 139-143.

1 disregarded a known harmful consequence of their actions.
2 Rather, in light of all the circumstances, defendants actions
3 were reasonable.

4 Accordingly, I recommend that defendants' motion for
5 summary judgment be granted.

6 These findings and recommendations are submitted to the
7 Honorable Frank C. Damrell, Jr., the United States District Judge
8 assigned to this case. 28 U.S.C. § 636(b)(1). Written
9 objections may be filed within ten days after being served with
10 these findings and recommendations. The document should be
11 captioned "Objections to Magistrate Judge's Findings and
12 Recommendations." The failure to file objections within the
13 specified time may waive the right to appeal the District Court's
14 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: August 31, 2005.

16 /s/ Peter A. Nowinski
17 PETER A. NOWINSKI
18 Magistrate Judge
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